

JS - 6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KRISTIN McCUTCHEON,
Plaintiff,

vs.

HARTFORD LIFE AND
ACCIDENT INSURANCE
COMPANY, CONTINENTAL
ASSURANCE COMPANY LONG
TERM DISABILITY PLAN,
Defendants.

CASE NO. CV 08-04808 RGK (SHx)

JUDGMENT
(Court Trial)

I. INTRODUCTION

On July 23, 2008, Kristin McCutcheon (“Plaintiff” or “McCutcheon”) filed suit against Hartford Life and Accident Insurance Company (“Hartford”) and the CNA Long Term Disability Plan, erroneously sued as Continental Assurance Company Long Term Disability Plan (“LTD Plan”) (collectively, “Defendants”).

///

///

///

1 This is an ERISA¹ action for long term disability (“LTD”) benefits pursuant to a
2 benefit plan, under Group Policy No. L 10015 (“Policy”), established by McCutcheon’s
3 employer Continental Assurance Company (“CNA”), a subsidiary of CNA Financial
4 Corporation (“CNAF”). In 2003, Hartford purchased the Policy, along with other policies,
5 and began administering claims shortly thereafter.

6
7 McCutcheon, who suffers from depression and other medical conditions related to
8 Bartter’s Syndrome,² alleges that Hartford improperly terminated her benefits under the
9 LTD Plan.

10
11 A court trial, set for June 9, 2009, was conducted on the parties’ briefs. The Court
12 has reviewed the Administrative Record (“AR”) and considered all of the arguments and
13 evidence presented. Based on the credible evidence and reasonable inferences drawn
14 therefrom, the Court finds in favor of Defendants.

15
16 **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

17
18 This opinion serves as the findings of fact and conclusions of law required by
19 Federal Rule of Civil Procedure 52. Any finding of fact that actually constitutes a
20 conclusion of law is adopted as such, with the converse also being true.

21 ///

22 ///

23 ///

24
25 ¹ Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*

26 ² Bartter’s Syndrome is an inherited defect in the renal tubules that causes low
27 potassium levels (hypokalemia), low chloride levels, which in turn causes metabolic
28 alkalosis.

1 **A. Findings of Fact**

2
3 1. McCutcheon is a 46 year old woman who was a Claims Division Manager
4 for CNA and was therefor a participant in the LTD Plan and covered under
5 the Policy.

6
7 2. The Policy defines “total disability” as follows:

8
9 “‘Total Disability’; means that, because of injury or Sickness, the Insured
10 Person is:

- 11 1. Continuously unable to engage in any occupation for which he is
12 or becomes qualified by education, training or experience; and
 2. Under the regular care of a licensed Physician other than himself.”

13 3. The Policy limits LTD benefits for disabilities related to mental and
14 nervous disorders to twenty-four months.

15
16 4. The essential duties of McCutcheon’s occupation included managing claims
17 supervisors in the Workers’ Compensation Division of CNA.

18
19 5. On December 1, 1998, McCutcheon submitted a Short Term Disability
20 (“STD”) claim, which CNA approved. McCutcheon’s STD claim was based
21 on Major Depression/Anxiety, as certified by her therapist Terry Schenk,
22 Ph.D. (“Dr. Schenk”).

23
24 6. Shortly thereafter, McCutcheon submitted an updated STD claim form
25 accompanied by an attending physician’s statement from her primary care
26 physician, Dr. Paul Corona (“Dr. Corona”), indicating that McCutcheon
27 was also suffering from medical conditions including hyperaldosteronism
28 and hypokalemia.

- 1 7. On February 19, 1999, Charles W. Paskewicz, Ph.D. ("Paskewicz")
2 performed a medical review for CNA on McCutcheon's claim and reported
3 that McCutcheon's symptoms associated with her mental and physical
4 conditions seriously impaired her current level of functioning, so as to make
5 her unable to work.
6
- 7 8. A March 24, 1999 medical record review by Chris Sokol, a CNA Nurse
8 Case Manager, concluded that McCutcheon's diagnosis of juxtaglomerular
9 hyperplasia/hypokalemia/hyperaldosteronism and bladder dysfunction were
10 verified by the laboratory data, the medications prescribed were
11 appropriate, and there is a high probability that her medical condition(s)
12 were a primary factor in her present disability.
13
- 14 9. In April 1999, Dr. Corona sent a certification of disability to CNA stating
15 that McCutcheon was unable to work indefinitely due to her medical
16 conditions.
17
- 18 10. CNA approved McCutcheon's STD benefits through August 1999.
19
- 20 11. McCutcheon's fifty-two weeks of STD benefits were exhausted on
21 September 26, 1999. CNA referred McCutcheon's claim for LTD
22 processing and on September 28, 1999, CNA informed McCutcheon that it
23 had approved her LTD claim.
24
- 25 12. In January 2000, Dr. Corona reported that McCutcheon's medical
26 conditions were unimproved and he could not predict if or when
27 improvement could be expected.
28

- 1 13. In December 2000, Dr. Schenk reported that McCutcheon remained
2 severely impaired by her medical conditions and was unable to return to
3 work.
4
- 5 14. In January 2001, McCutcheon submitted forms to CNA describing her
6 medical conditions and impairments to her daily functioning. McCutcheon
7 also provided CNA with the contact information for her new
8 endocrinologist, Dr. Van Herle, so that they could obtain her treatment
9 records.
10
- 11 15. In July 2001, McCutcheon submitted a Statement of Disability form to
12 CNA, along with an accompanying attending physician's statement from
13 Dr. Van Herle stating a diagnosis of hypothyroidism, hyperaldosteronism,
14 hypokalemia, and several other medical conditions and reported that
15 McCutcheon was totally disabled.
16
- 17 16. In September 2001, McCutcheon accepted CNA's offer to assist her with
18 obtaining social security benefits.
19
- 20 17. In February 2002, Dr. Schenk reported to CNA that McCutcheon remained
21 severely impaired.
22
- 23 18. On April 1, 2002, Dr. Corona reported to CNA that McCutcheon was
24 unable to work.
25
- 26 19. In April 2002, McCutcheon provided to CNA updated lab test results,
27 which showed abnormalities, including high aldosterone levels.
28

1 20. In May 2002, Dr. Van Herle provided McCutcheon's radiology reports to
2 CNA.

3
4 21. In August 2002, CNA conducted three days of surveillance of McCutcheon
5 and obtained approximately three minutes of videotape of McCutcheon
6 performing activities such as operating a motor vehicle and walking to and
7 from her mailbox.

8
9 22. In October 2002, Dr. Schenk reported to CNA that McCutcheon continued
10 to be severely impaired and was unable to work. That same month, Dr. Van
11 Herle reported to CNA that McCutcheon had persistent hypokalemia and
12 hypoglycemia, which were difficult to control.

13
14 23. In October 2002, McCutcheon was awarded social security disability
15 benefits.

16
17 24. In June 2003, CNA informed McCutcheon that it was investigating whether
18 her disability was psychiatrically based and thus subject to the two-year
19 limit in the Policy for mental and nervous disorders. Nonetheless, CNA
20 continued to pay LTD benefits to McCutcheon.

21
22 25. In response to CNA's investigation, in July 2003, McCutcheon provided
23 CNA with a certification of disability from her endocrinologist, Christine
24 Darwin, M.D. ("Dr. Darwin"), who reported that McCutcheon suffered
25 from medical conditions, including hyperaldosteronism, and that she could
26 not work.

- 1 26. In 2004, Hartford purchased a block of CNA's disability business, including
2 McCutcheon's claim, and continued to pay LTD benefits to McCutcheon.
3
- 4 27. In October 2005, Hartford requested McCutcheon complete another
5 medical release and Statement of Daily Activities.
6
- 7 28. In January 2006, McCutcheon provided CNA with the requested medical
8 release and Statement of Daily Activities, along with the name and phone
9 numbers of all of the doctors that McCutcheon had seen since she last
10 worked in September 1998, which included Dr. Corona, Dr. Schenk, Dr.
11 Van Herle, and Dr. Alan Elias ("Dr. Elias"), an endocrinologist.
12
- 13 29. On February 7, 2006, Hartford sent requests via facsimile for
14 McCutcheon's medical records from July 2003 to the present to Dr. Corona,
15 Dr. Elias, and Dr. Michael Bryer-Ash ("Dr. Bryer-Ash").
16
- 17 30. On February 17, 2006, Hartford received McCutcheon's medical records
18 from Dr. Elias. The records included office notes from November 2004 and
19 August 2005 stating that McCutcheon has Bartter's Syndrome. The records
20 also included a lab report indicating that in November 2004 McCutcheon
21 had abnormal Thyroid Stimulating Hormone ("TSH") levels.
22
- 23 31. In February 2006, Hartford received McCutcheon's medical records from
24 Dr. Bryer-Ash. The records included office notes from November 2003,
25 which stated the following:
26
- 27 "Impression: 1. Secondary hyperaldosteronism with normal blood pressure
28 and hypokalemia. This is atypical and of uncertain cause. If the patient had
 Bartter's Syndrome, high dose Aldactone would be expected to make her

1 hypotensive, but this is not the case. This pattern is more typical of a
2 diuretic or laxative use, but the patient denies this. She also has no history
3 of vomiting or diarrhea to suggest dehydration and electrolyte loss.
4 Nevertheless, she appear to be well compensated on her present regimen. 2.
5 Hypothyroidism. At this time she is clinically euthyroid and her last TSH
6 was normal, and she has been on a stable dose of thyroid hormone
7 replacement for some time. 3. The symptoms of which she is presently
8 complaining, sound more suggestive of panic attacks than of any
9 endocrinologic abnormality.

10 The records also included lab results from November 2003 and June 2003,
11 which indicated low potassium levels and elevated aldosterone levels.

12
13 32. In April 2006, Dr. Schenk sent Hartford another certification of disability
14 and reported that McCutcheon could not work due to pain, dizziness,
15 fatigue, and cognitive defect.

16 33. In May 2006, Dr. Corona reported to Hartford that McCutcheon continued
17 to suffer from hyperaldosteronism and chronic mood disorder.

18 34. In September 2006, Hartford received approximately 140 pages of medical
19 records from Dr. Corona that spanned from 1999 to May 2006. The records
20 included office notes and other documents discussing the following
21 conditions: hypokalemia/low potassium levels, osteopenia, hypoglycemia,
22 shakiness, anxiety, fatigue, headaches, insomnia, mood swings, heart
23 palpitations, abnormal TSH and aldosterone levels, Irritable Bowel
24 Syndrome, hiatal hernia, chronic pain, Major Depressive Disorder, Post
25 Traumatic Stress Disorder ("PTSD"), hypothyroidism, hyperaldosteronism,
26 hyper-reninsim, dizziness, diverticulosis, nausea, vomiting, muscle
27 weakness, and dehydration.

28 35. On September 12, 2006, Maria Ramos, a Hartford claim examiner,
conducted a file review and concluded that McCutcheon's medical records

1 from 2003 to 2006 did not demonstrate continuing disability based on a
2 physical disorder and noted that Hartford should investigate whether
3 McCutcheon had exhausted benefits for mental and nervous conditions.
4 Specifically, Ramos found that although physicians provided a current
5 diagnosis of hyperaldosteronism, the “clinical” did not report elevated
6 blood pressures or hypokalemia since 2003, except for one incident in 2004.
7 She also noted that McCutcheon’s aldosterone and plasma rennin activity
8 was elevated in 2003, but there was no documentation of recent tests
9 showing such results. Ramos also stated that Dr. Corona’s conclusion that
10 fatigue was the main factor preventing McCutcheon from working was not
11 supported by the “clinical” reviewed from 2003 to 2006 and that although
12 Dr. Schenk had provided a diagnosis on 4/6/06 of depression and panic
13 disorder/PTSD with extensive subjective symptoms, clinical notes were not
14 provided for review.

15
16 36. On September 19, 2006, Maria Ramos sent McCutcheon a Claimant
17 Questionnaire, which McCutcheon completed and returned along with an
18 updated medical release. McCutcheon also provided Hartford with a list of,
19 and contact information for, her treating doctors, including Dr. Schenk, Dr.
20 Corona, Dr. Elias, and Dr. Sternfeld.

21
22 37. On November 28, 2006, Hartford sent McCutcheon a letter informing her
23 that it had completed its review of her claim and was terminating her
24 benefits.

25
26 38. McCutcheon appealed the termination on May 1, 2007 and provided
27 Hartford with a further certification of disability dated April 7, 2007 that
28 was signed by McCutcheon’s nephrologist, Dr. Steve Tran (“Dr. Tran”).

1 39. In June 2007, Hartford referred the claim to MES Solutions (“MES”) for
2 review.

3
4 40. On June 20, 2007, Dr. James Woods, an MES reviewer, completed a
5 written report, in which he stated that the information presented did not
6 document that McCutcheon had physical restrictions/limitations from any
7 medical condition. Specifically, Dr. Woods reported that McCutcheon “has
8 never been documented to have a low potassium level on multiple lab
9 checks over several years, and she has not been documented to have any
10 complications of hypokalemia (ie muscle weakness, syncope, or
11 arrhythmias). She has not been documented to be volume depleted related
12 to her spironolactone therapy. She has never been documented to have
13 nausea/vomiting or other untoward side effects related to intake of
14 potassium pills. In summary, there is no documentation of any physical
15 functional limitations or restrictions in this claimant.”

16
17 41. On June 26, 2007, Joye Kelly, Hartford’s Appeal Specialist, wrote to
18 McCutcheon’s attorney, Ellen Serbin, to inform her that Hartford was
19 upholding the denial on appeal and explained the reasons for doing so.

20
21 42. McCutcheon has exhausted her administrative remedies with respect to
22 Hartford’s denial of her claim for LTD benefits.

23
24 **B. Conclusions of Law**

25
26 McCutcheon challenges Hartford’s termination of LTD benefits as of November
27 28, 2006.

1 1. Jurisdiction

2
3 The Court has jurisdiction over this ERISA matter pursuant to 29 U.S.C.
4 § 1132(e)(1) and 28 U.S.C. § 1331.

5
6 2. Standard of Review

7
8 Courts review a denial of benefits under an ERISA plan de novo “unless the
9 benefit plan expressly gives the plan administrator or fiduciary discretionary authority to
10 determine eligibility for benefits or to construe the plan’s terms . . .” *Firestone Tire &*
11 *Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). The Ninth Circuit has held that in order
12 for a plan to alter the standard of review from de novo to abuse of discretion, the plan
13 must unambiguously provide discretion to the administrator. *Abatie v. Alta Health & Life*
14 *Ins. Co.*, 458 F.3d 955, 963 (9th Cir. 2006); *see Feibusch v. Integrated Device*
15 *Technology, Inc. Employee Ben Plan*, 463 F.3d 880, 883 (9th Cir. 2006).

16
17 Here, the Court finds that the LTD Plan expressly grants discretionary authority to
18 the administrator and thus the Court will apply the abuse of discretion standard.

19
20 Specifically, the 1998 Summary Plan Description (“SPD”) expressly states that the
21 “Plan Administrator has the discretionary authority to determine eligibility for benefits
22 and to construe the terms of the Plans.” (AR 826.) In addition, the Instrument of
23 Appointment for the CNA Integrated Disability Plan that was executed when Hartford
24 purchased the Plan from CNA designates Hartford as the Plan Administrator and states
25 that “Hartford shall have the full and discretionary power and authority (in addition to
26 powers and authority set forth in the Plan): (a) to determine eligibility for benefits or
27 coverage; (b) to decide such claims or appeals; and (c) to construe and interpret the Plan
28 and resolve factual and all other issues.” (AR 876.)

1
2 Nonetheless, Plaintiff contends that Hartford lacks discretionary authority because
3 (1) the SPD is dated 1998, which is five years after CNA issued the Policy, (2) Hartford
4 expressly disclaimed that it is the plan administrator in discovery responses, and (3)
5 Defendants have not met their burden of showing that it provided a copy of the plan
6 documents to Plaintiff.

7
8 The Court finds Plaintiff's contentions unavailing for the following reasons:

9
10 First, as to Plaintiff's contention that the Court cannot rely on the SPD because it is
11 dated 1998, it appears that Plaintiff's disability began in 1998 and thus the 1998 SPD
12 described LTD benefits at the time Plaintiff first sought benefits. Moreover, as discussed
13 above, the SPD expressly grants discretionary authority to the Plan Administrator and
14 since the Policy is silent as to discretionary authority, there is no reason to believe, and
15 the parties have not otherwise shown, that any other plan document contradicts the SPD's
16 grant of discretionary authority.³

17
18 Second, as to Plaintiff's contention that Hartford expressly disclaimed that it is the
19 Plan Administrator in discovery responses, the Court finds Plaintiff's contention
20 unpersuasive because (1) the Instrument of Appointment clearly identifies Hartford as the
21 "Plan Administrator" (AR 876), (2) in its Answer, Defendants admit that when Hartford
22 purchased CNA's group disability business, it became the claim fiduciary for the LTD
23 Plan (Answer ¶ 4), (3) the parties state, in their Joint Rule 26(f) Report, that the "plan is
24 funded and administered by Hartford . . ." (Rule 26(f) Report 2), and (4) in acquiring
25

26 ³ When interpreting the terms of an ERISA plan, courts examine the plan
27 documents as a whole. *Bergt v. Retirement Plan for Pilots Employed by MarkAir, Inc.*,
28 293 F.3d 1139, 1143 (9th Cir. 2002). A summary plan description is part of ERISA plan
documents. *Id.*

1 CNA's group disability business, Hartford acquired all of the rights and liabilities of that
 2 business, including CNA's discretionary authority under the Plan, *see SCM Corp. v.*
 3 *Berkel, Inc.*, 73 Cal. App. 3d 49 (1977); *Giannone v. Metropolitan Life Ins. Co.*, 311 F.
 4 Supp. 2d 168 (D.Mass. 2004).

5
 6 Third, as to Plaintiff's contention that Defendants have not met their burden of
 7 showing that a copy of the document under which discretion is claimed was provided to
 8 Plaintiff pursuant to 29 U.S.C. § 1024(b)(1)(B), the Court finds that Hartford has shown
 9 that it provided Plaintiff with a copy of the plan documents. (AR 678.) Moreover,
 10 Plaintiff's reliance on *Gertjeansen v. Kemper Ins. Co.*, 2008 WL 1787484 (9th Cir.
 11 2008), a Ninth Circuit unpublished memorandum opinion, is inappropriate because that
 12 case (1) is not binding authority, 9th Cir. R. Rule 36-3(a), and (2) does not expressly hold
 13 that in order for a court to apply the abuse of discretion standard of review, the
 14 administrator must prove that it provided copies of the plan documents to plan
 15 participants, even when, as here, the plaintiff has failed to present evidence showing she
 16 did not receive the plan documents.

17
 18 Thus, since the LTD Plan granted discretionary authority to Hartford to determine
 19 eligibility for benefits and construe the terms of the plan, the Court will apply the abuse
 20 of discretion standard of review.

21 22 3. Conflict of Interest

23
 24 In ERISA cases, evidence of a conflict should "be weighed as a 'factor in
 25 determining whether there is an abuse of discretion.'" *Firestone*, 489 U.S. at 115 (quoting
 26 Restatement § 187, Comment *d*). In determining whether there is an abuse of discretion, a
 27 district court's review must be "informed by the nature, extent, and effect on the decision
 28

1 making process of any conflict of interest that may appear on the record.”⁴ *Abatie*, 458
 2 F.3d at 967. Looking at all the facts and circumstances, the district court must “decide in
 3 each case how much or how little to credit the plan administrator’s reason for denying
 4 insurance coverage. An egregious conflict may weigh more heavily (that is, may cause
 5 the court to find an abuse of discretion more readily) than a minor, technical conflict.” *Id.*
 6 at 968.

7
 8 A conflict of interest can arise when the entity that administers the plan determines
 9 whether a participant is eligible for benefits and pays benefits out of its own pockets.
 10 *Metropolitan Life Ins. Co. v. Glenn*, 128 S.Ct. 2343, 2346 (2008).

11
 12 Here, it appears that Hartford operates under a conflict of interest because Hartford
 13 determines whether a participant is eligible for benefits and pays benefits out of its own
 14 pockets. (Rule 26(f) Report 2;)

15
 16 Plaintiff has also presented other evidence suggesting a conflict because (1)
 17 evidence filed under seal with the Court, shows a financial relationship between MES (the
 18 entity that reviewed McCutcheon’s claim) and Hartford, which McCutcheon contends
 19 “provides clear motivation for MES to preserve its ever increasing lucrative financial
 20 relationship with Hartford by providing Hartford with medical reviews to substantiate
 21 claim terminations” (Reply 22), and (2) Hartford assisted McCutcheon with obtaining
 22 social security disability benefits, but Hartford has now taken an inconsistent position by
 23 denying McCutcheon’s claim for disability benefits. (AR 605-618.)

24
 25 With these principles in mind, the Court considers the facts and circumstances
 26 surrounding McCutcheon’s claim (contained in the Administrative Record) and
 27

28 ⁴ The Court may consider extrinsic evidence. *Abatie*, 458 F.3d at 967.

1 Hartford's reasons for terminating McCutcheon's claim for LTD benefits.

2
3 4. Discussion

4
5 As noted above, Hartford terminated McCutcheon's LTD benefits on November
6 30, 2006 based on its determination that McCutcheon's disability was based on a mental
7 disorder and was thus subject to the Plan's twenty-four month limit for benefits based on
8 such disorders. (AR 136-140.) Hartford later reconsidered, on appeal, its decision denying
9 McCutcheon's claim for LTD benefits and upheld its decision as correct. (AR 75-77.) For
10 the following reasons, the Court finds that Defendants did not abuse their discretion in
11 terminating McCutcheon's claim for LTD benefits.

12
13 Plaintiff contends that Hartford failed to provide a full and fair review, as required
14 by ERISA, because it failed to inform McCutcheon (1) as to what information it required
15 to support a continuation of her benefits, (2) that it had no intention of obtaining her
16 updated medical records, and (3) "prior to its unilateral closure of the record, that it
17 desired to speak with Dr. Tran in connection with her appeal" (Plf's Trial Brief 21).
18 Plaintiff, however, has failed to cite evidence in the record supporting some of these
19 contentions. Plaintiff has also failed to cite binding authority⁵ requiring a plan
20 administrator to inform a plan participant whether it intended to obtain the participant's
21
22
23

24 ⁵ Plaintiff relies on *Saffron v. Wells Fargo & Co. Long Term Disability Plan*, 522
25 F.3d 863 (9th Cir. 2008) to support her contention that Hartford failed to conduct a full
26 and fair review of her claim determination by not telling her about the specific evidence
27 that it required to support her claim. The court's decision in *Saffron*, however, does not
28 support Plaintiff's contentions in this case because unlike the defendant in that case, here,
it appears that Hartford did undertake a meaningful dialogue with McCutcheon in
connection with its termination of her LTD benefits.

1 updated medical records⁶ and that it desired to speak with a particular doctor in
2 connection with a participant's appeal.

3
4 Moreover, the administrative record supports Hartford's contention that it did
5 provide a full and fair review because Hartford (1) informed McCutcheon of its intention
6 to investigate whether her claim was barred by the mental/nervous twenty-four month
7 limit and invited her to submit documentation supporting her claim, (2) contacted
8 McCutcheon's doctors on several different occasions to discuss her condition and the
9 nature of her disability, (3) mailed letters to her doctors informing them that Hartford
10 would be contacting them regarding McCutcheon's claim and her medical condition, (4)
11 reviewed her voluminous medical records from several doctors that included numerous
12 lab and diagnostic test results, (5) invited McCutcheon to submit all documents
13 supporting her claim after it initially notified McCutcheon that it was terminating her
14 benefits, and (6) explained to McCutcheon on several different occasions, the basis for its
15 decision to deny her claim and related appeal and informed her of available avenues to
16 dispute its decision. (AR 75-80, 84-87, 136-140, 160-168, 354-356, 366, 412-13.)

17
18 As to McCutcheon's contention that there is no credible support for Hartford's
19 termination of her LTD benefits, the Court finds that, contrary to McCutcheon's
20 contentions, the Administrative Record *does contain* credible support for Hartford's
21 termination of her LTD benefits because (1) Hartford found that, even though
22 McCutcheon's doctors reported that she could not work due to her disability, those
23 doctors' records and lab tests did not support the doctors' conclusions, (2) the mere fact
24 that Dr. Woods did not treat McCutcheon does not render his opinion invalid and, in fact,
25 Dr. Woods's report relied on statements and records from as late as 2006, from

26
27 ⁶ It appears that, a few months before it terminated her benefits, Hartford had
28 actually received McCutcheon's medical records from several doctors and relied on these
records in rendering its decision. (AR 340-7, 329-332, 174-315.)

1 McCutcheon's own doctors that her condition may not be consistent with a diagnosis of
2 Bartter's Syndrome and was more consistent with her diagnosis of depression, and (3) it
3 appears that Hartford may have considered McCutcheon's medications when rendering its
4 decision and Plaintiff has not shown that Hartford failed to do so and that such a failure
5 enabled Hartford to terminate McCutcheon's benefits. (AR 84-87, 143, 160-168, 174-
6 315, 340-347, 329-332.)

7
8 In light of the foregoing, the Court finds that Hartford did not abuse its discretion
9 by terminating McCutcheon's claim for LTD benefits.

10
11 **III. CONCLUSION**

12
13 For the foregoing reasons, the Court grants judgment in favor of Defendants.

14
15 July 1, 2009
16 Date



R. Gary Klausner
United States District Judge